

*Walters v. Icicle Seafoods, Inc., et al.*, No. 05-35334

**MAY 10 2006**

REINHARDT, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

I dissent. I agree that Walters' conduct was both frustrating and inexcusable. Nevertheless, we require a warning prior to dismissal in most cases, *see, e.g., Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 337, 352-53 (9th Cir. 1995); *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1412-13 (9th Cir. 1990); *Hamilton v. Neptune Orient Lines, Ltd.*, 811 F.2d 498, 500 (9th Cir. 1987); *Mir v. Fosburg*, 706 F.2d 916, 919 (9th Cir. 1983), and especially when the plaintiff is an injured seaman, a litigant whom we are required to treat with special solicitude. *See, e.g., Thorman v. Am. Seafoods Co.*, 421 F.3d 1090, 1099 (9th Cir. 2005) (discussing "the solicitude owed by courts to seamen" because of their special status as "wards of admiralty"); *Fuller v. Golden Age Fisheries*, 14 F.3d 1405, 1408 (9th Cir. 1994) (citing "a long line of cases that describe seamen as 'wards of the court' needing special protections"). In my opinion, the failure to warn the Jones Act plaintiff of the consequences of his conduct before dismissing his action requires reversal of the district court's judgment.